IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.879 of 2007

***Decided on:* December 11, 2007.**

Rajinder Kumar ***…Petitioner.***

VERSUS

State of Himachal Pradesh ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Petitioner: **Mr.M.L.Brakta, Advocate.**

For the respondent: **Mr.M.L.Chauhan, Addl.A.G.**

Kuldip Singh, Judge (Oral)

This is an application for releasing the petitioner on bail filed under Section 438 Cr.P.C. in F.I.R. No.229/07, registered at Police Station, Palampur, District Kanra on 19.9.2007 under Section 61(1) (a) of the Punjab Excise Act, 1914 as applicable in the State of Himachal Pradesh.

2. The facts, in brief, are that police party, headed by S.I. Prem Chand, was on *Naka* duty at place *Pahara Bodhal Chowk* in the intervening night on 18/19th September, 2007, at about 12.30 A.M. a truck came from *Maniara* side which was stopped on giving signal, two persons jumped from the truck and taking the benefit of darkness ran away. The driver of the truck No.HR-58-4225 was over-powered and the truck was checked. There was double tool box in the truck having in all 1200 bottles of country liquor *Hulchul Somphia* brand

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Whether the reporters of the local papers may be allowed to see the judgment? Yes

Chandigarh and 15 boxes of Indian made foreign liquor *Officer Choice* brand total having 180 bottles. The driver disclosed his name Gurdev Singh. He disclosed the names of other persons sitting in the truck as Parmod and Mani Rana. The driver could not produce any papers for transportation of the liquor. The liquor and the truck were taken into possession and a case under Section 61 of the Punjab Excise Act as applicable in the State of Himachal Pradesh was registered. The driver Gurdev Singh was arrested but he has been released on bail by the Court and truck No.HR-58-4225 has also been released. The notice was issued on 5.12.2007 and on that date interim bail was granted to the petitioner. He was directed to appear before the Investigating Officer on 6.12.2007 at 10 A.M. with direction to continue to appear before him as and when called. The learned Additional Advocate General has filed the status report.

3. Heard and perused the record. The learned Additional Advocate General has opposed the bail application. He has submitted that the petitioner is to be interrogated so as to find out the source from where the liquor was allegedly transported. The petitioner is not co-operating in the investigation. He did not appear before the Investigation Officer on 6.12.2007 and thereafter. On the contrary, learned counsel for the petitioner has submitted that petitioner appeared before the Investigation Officer as and when called. The truck driver has been released on bail. The petitioner is ready to join the investigation. He has submitted that petitioner is entitled to bail as substantial part of the investigation is already over

and no recovery is to be made from him. It has been submitted on behalf of the State that in investigation it has come that some of the liquor was unloaded at Dehan and remaining was to be sold later on. The liquor was loaded in the truck at *Manimajra* and was purchased from Chandigarh where it is cheap. It has also been submitted that the attempts were made at various places to trace out the petitioner but he is avoiding to join investigation. The petitioner earlier filed bail application under Section 438 Cr.P.C. which was rejected by the learned Additional Sessions Judge, Kangra on 23.11.2007. As per the prosecution case, the petitioner was sitting in the truck which was transporting illegally huge quantity of liquor. He ran away when the truck was stopped. The running away of the petitioner when the truck was stopped also indicates his involvement in the offence. There is no reason to disbelieve the prosecution that the petitioner is not co-operating in the investigation. On 5.12.2007, he was directed to join the investigation. In the facts and circumstances of the case and for complete investigation of the case, in my opinion, the petitioner at this stage is not entitled to bail under Section 438 Cr.P.C. Accordingly, the application is dismissed.

4. The observations made in the order shall not be construed as expression of opinion on the merits of the case.

December 11, 2007 ***(Kuldip Singh), J.***

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